

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

No. 12-CR-58 (SRN)

v.

ORDER

Gary Albert Collyard,

Defendant.

David J. MacLaughlin and Benjamin F. Langner, United States Attorney's Office, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, for Plaintiff

Gary Albert Collyard, #08 256 041, Federal Prison Camp, P.O. Box. 700, Yankton, South Dakota 57078, Pro Se

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on Defendant Gary Albert Collyard's Pro Se Motion to Extend Time to File Notice of Appeal [Doc. No. 113].

On March 9, 2016, this Court denied Collyard's Pro Se Motion to Vacate under 28 U.S.C. § 2255, granted the government's Motion to Dismiss, and denied Collyard a certificate of appealability. (Order of 3/9/16 [Doc. No. 111].) Judgment was entered on March 10, 2016. (J. in a Crim. Case [Doc. No. 112].)

As the Court noted in its March 9, 2016 ruling, in order to appeal an adverse decision on a § 2255 motion to the court of appeals, a movant must first obtain a certificate of appealability. See 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability

to the court may be issued by a “circuit justice or judge.” Id. § 2253(c)(1).

A notice of appeal must be filed within 60 days after the entry of judgment or the order appealed from. Fed. R. App. P. 4(a)(1)(B)(I). Collyard seeks a 30-day extension.¹ (Mot. to Extend Time at 1 [Doc. No. 113].)

Collyard’s request for an extension of time was timely filed, as Fed. R. App. P. 4(a)(5)(A) provides a 30-day window even after the expiration of the 60-day period to seek an extension, provided the movant shows “excusable neglect or good cause.” Fed. R. App. P. 4(a)(5)(A)(i)-(ii). Collyard’s request for an extension of time is dated May 2, 2016, and was docketed by the Clerk’s Office on May 4, 2016, prior to the expiration of the 60-day period. To establish good cause, Collyard states that he is unable to file his appeal within the 60-day period because his father passed away in March 2016, which has impacted Collyard’s family, who otherwise have provided him with legal research assistance. (Collyard Aff. [Doc. No. 113 at 3].) In addition, he has limited access to the law library due to his work assignment on the grounds of the Yankton Federal Prison Camp. (Id.) During the appeal period, his work involved longer hours due to inclement weather, as his work involved shoveling snow. (Id.) The snow emergency hours made it difficult for him to access the law library. (Id.) He was also impeded in his ability to fully research his legal documents and communicate with family and friends to seek

¹ While Collyard refers generally to a extension of time for filing a “Notice of Appeal,” the Court construes this as an extension for appealing the denial of a certificate of appealability, since he could not take a substantive appeal to the Eighth Circuit Court of Appeal absent the issuance of a certificate of appealability

assistance with legal research. (Id.) Finally, the cost associated with legal research has been prohibitive. (Id.)

The Court finds that Collyard has sufficiently demonstrated good cause for his request for an extension of time. The Court therefore grants his request, giving him the requested 30-day extension.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Defendant Gary Albert Collyard's Pro Se Motion to Extend Time to File Notice of Appeal [Doc. No. 113] is **GRANTED**, as set forth herein.

Dated: May 16, 2016

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge